

.....
(Original Signature of Member)

108TH CONGRESS
1ST SESSION

H. R. _____

To amend the Federal Trade Commission Act to provide that the advertising or sale of a mislabeled copy-protected music disc is an unfair method of competition and an unfair and deceptive act or practice, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. BOUCHER (for himself, Mr. DOOLITTLE, Mr. BACHUS, and Mr. KENNEDY of Rhode Island) introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Federal Trade Commission Act to provide that the advertising or sale of a mislabeled copy-protected music disc is an unfair method of competition and an unfair and deceptive act or practice, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*



1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Digital Media Con-
3 sumers’ Rights Act of 2003”.

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

6 (1) The limited introduction into commerce of
7 “copy-protected compact discs” has caused con-
8 sumer confusion and placed increased, unwarranted
9 burdens on retailers, consumer electronics manufac-
10 turers, and personal computer manufacturers re-
11 sponding to consumer complaints, conditions which
12 will worsen as larger numbers of such discs are in-
13 troduced into commerce.

14 (2) Recording companies introducing new forms
15 of copy protection should have the freedom to inno-
16 vate, but should also be responsible for providing
17 adequate notice to consumers about restrictions on
18 the playability and recordability of “copy-protected
19 compact discs”.

20 (3) The Federal Trade Commission should be
21 empowered and directed to ensure the adequate la-
22 beling of prerecorded digital music disc products.



1 **SEC. 3. INADEQUATELY LABELED COPY-PROTECTED COM-**
2 **PACT DISCS.**

3 The Federal Trade Commission Act (15 U.S.C. 41
4 et seq.) is amended by inserting after section 24 the fol-
5 lowing new section:

6 **“SEC. 24A INADEQUATELY LABELED COPY-PROTECTED**
7 **COMPACT DISCS.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) The term ‘Commission’ means the Federal
10 Trade Commission.

11 “(2) The term ‘audio compact disc’ means a
12 substrate packaged as a commercial prerecorded
13 audio product, containing a sound recording or re-
14 cordings, that conforms to all specifications and re-
15 quirements for Red Book Audio and bears a duly li-
16 censed and authorized ‘Compact disc Digital Audio’
17 logo.

18 “(3) The term ‘prerecorded digital music disc
19 product’ means a commercial audio product com-
20 prised of a substrate in the form of a disc in which
21 is recorded a sound recording or sound recordings
22 generally in accordance with Red Book Audio speci-
23 fications but that does not conform to all licensed
24 requirements for Red Book Audio: Provided, That a
25 substrate containing a prerecorded sound recording
26 that conforms to the licensing requirements applica-



1 ble to a DVD-Audio disc or a Super Audio Compact
2 Disc is not a prerecorded digital music disc product.

3 “(4) The term ‘Red Book Audio’ means audio
4 data digitized at 44,100 samples per second (44.1
5 kHz) with a range of 65,536 possible values as de-
6 fined in the ‘Compact Disc-Digital Audio System
7 Description’ (first published in 1980 by Philips N.V.
8 and Sony Corporation, as updated from time to
9 time.

10 “(b) PROHIBITED ACTS.—

11 “(1) The introduction into commerce, sale, of-
12 fering for sale, or advertising for sale of a
13 prerecorded digital music disc product which is mis-
14 labeled or falsely or deceptively advertised or
15 invoiced, within the meaning of this section or any
16 rules or regulations prescribed by the Commission
17 pursuant to subsection (d), is unlawful and shall be
18 deemed an unfair method of competition and an un-
19 fair and deceptive act or practice in commerce under
20 section 5(a)(1).

21 “(2) Prior to the time a prerecorded digital
22 music disc product is sold and delivered to the ulti-
23 mate consumer, it shall be unlawful to remove or
24 mutilate, or cause or participate in the removal or
25 mutilation of, any label required by this section or



1 any rules or regulations prescribed by the Commis-
2 sion pursuant to subsection (d) to be affixed to such
3 prerecorded digital music disc product. Any person
4 violating this subsection shall be deemed to have en-
5 gaged in an unfair method of competition and an
6 unfair and deceptive act or practice in commerce
7 under this Act.

8 “(c) MISLABELED DISCS.—For purposes of this sec-
9 tion, a prerecorded digital music disc product shall be con-
10 sidered to be mislabeled if it—

11 “(1) bears any logo or marking which, in ac-
12 cordance with common practice, identifies it as an
13 audio compact disc;

14 “(2) fails to bear a label on the packaging in
15 which it is sold at retail in words that are prominent
16 and plainly legible on the front of the packaging
17 that—

18 “(A) it is not an audio compact disc;

19 “(B) it might not play properly in all de-
20 vices capable of playing an audio compact disc;
21 and

22 “(C) it might not be recordable on a per-
23 sonal computer or other device capable of re-
24 cording content from an audio compact disc; or



1 “(3) fails to provide the following information
2 on the packaging in which it is sold at retail in
3 words that are prominent and plainly legible—

4 “(A) any minimum recommended software
5 requirements for playback or recordability on a
6 personal computer;

7 “(B) any restrictions on the number of
8 times song files may be downloaded to the hard
9 drive of a personal computer; and

10 “(C) the applicable return policy for con-
11 sumers who find that the prerecorded digital
12 music disc product does not play properly in a
13 device capable of playing an audio compact disc.

14 “(d) RULEMAKING.—(1) The Commission may de-
15 velop such rules and regulations as it deems appropriate
16 to prevent the prohibited acts set forth in subsection (b)
17 and to require the proper labeling of prerecorded digital
18 music disc products under subsection (c).

19 “(2)(A) The Commission may develop such ad-
20 ditional rules and regulations as it deems necessary
21 to establish appropriate labeling requirements appli-
22 cable to new audio discs, using new playback for-
23 mats (including DVD-Audio discs and Super Audio
24 Compact Discs), if the Commission finds, with re-
25 spect to a particular type of disc, that—



1 “(i) the manner in which the discs are
2 displayed at retail, packaged, or marketed
3 results in substantial consumer confusion
4 about the playability and recordability of
5 such discs;

6 “(ii) the discs are not appropriately
7 labeled with respect to their playability on
8 standard audio compact disc playback de-
9 vices; and

10 “(iii)(I) the discs are not recordable
11 on a personal computer; or

12 “(II) if the discs are recordable, a re-
13 cording made from such a disc is bound to
14 a particular device.

15 “(B) To the maximum extent practicable,
16 the Commission shall seek to ensure that any
17 rules and regulations developed under this para-
18 graph impose labeling requirements comparable
19 to the requirements imposed under the rules
20 and regulations developed under paragraph
21 (1).”.

22 **SEC. 4. REPORT TO CONGRESS.**

23 Not later than 2 years after the date of enactment
24 of this Act, the Federal Trade Commission shall submit
25 to Congress a report detailing the following:



1 (1) The extent to which prerecorded digital
2 music disc products (as defined in section 24A of
3 the Federal Trade Commission Act, as added by sec-
4 tion 3 of this Act) have entered the market over the
5 preceding 2 years.

6 (2) The extent to which the Commission has re-
7 ceived complaints from consumers about the imple-
8 mentation of return policies for consumers who find
9 that a prerecorded digital music disc product does
10 not play properly in a device capable of playing an
11 audio compact disc (as defined in section 24A of
12 such Act).

13 (3) The extent to which manufacturers and re-
14 tailers have been burdened by consumer returns of
15 devices unable to play prerecorded digital music disc
16 products.

17 (4) The number of enforcement actions taken
18 by the Commission pursuant to section 24A of such
19 Act.

20 (5) The number of convictions or settlements
21 achieved as a result of enforcement actions taken by
22 the Commission pursuant to section 24A of such
23 Act.

24 (6) Any proposed changes to this Act, with re-
25 spect to prerecorded digital music disc products,



1 that the Commission believes would enhance enforce-
2 ment, eliminate consumer confusion, or otherwise
3 address concerns raised by consumers with the Com-
4 mission.

5 **SEC. 5. FAIR USE AMENDMENTS.**

6 (a) SCIENTIFIC RESEARCH.—Subsections (a)(2)(A)
7 and (b)(1)(A) of section 1201 of title 17, United States
8 Code, are each amended by inserting after “title” in sub-
9 section (a)(2)(A) and after “thereof” in subsection
10 (b)(1)(A) the following: “unless the person is acting solely
11 in furtherance of scientific research into technological pro-
12 tection measures”.

13 (b) FAIR USE RESTORATION.—Section 1201(c) of
14 title 17, United States Code, is amended—

15 (1) in paragraph (1), by inserting before the pe-
16 riod at the end the following: “and it is not a viola-
17 tion of this section to circumvent a technological
18 measure in connection with access to, or the use of,
19 a work if such circumvention does not result in an
20 infringement of the copyright in the work”; and

21 (2) by adding at the end the following new
22 paragraph:

23 “(5) It shall not be a violation of this title to
24 manufacture, distribute, or make noninfringing use
25 of a hardware or software product capable of ena-



1 bling significant noninfringing use of a copyrighted
2 work.”.

